

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

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 BRENT TWEED, et al, Plaintiffs, )  
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 v. )  
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 TOWN OF NOTTINGHAM, et al, Defendants. )  
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Case No. 218-2019-CV-00398

**NOTTINGHAM WATER ALLIANCE’S RENEWED MOTION TO RECONSIDER**

Nottingham Water Alliance, Inc (“NWA”), by and through the undersigned counsel, respectfully renews the Motion to Reconsider the Order Denying the Motion to Intervene based on new evidence showing that the Town of Nottingham and Donna Danis (“Defendants”) are unwilling to defend the Freedom From Chemical Trespass Rights-Based Ordinance (the “Ordinance”), and requests that this Honorable Court hold the proceedings for summary judgement in abeyance until intervention has been fully resolved. The grounds for this motion are as follows:

1. After the NWA filed the first Motion to Reconsider, events of material importance to the issue of intervention transpired, to which the NWA now invites this Court’s attention.
2. Plaintiffs filed a Motion for Summary Judgement asking the Court to declare the Ordinance invalid and to award attorneys fees to the Plaintiffs. *Pls.’ Mot. Summary Judgement.*

3. Defendants' sole timely response to Plaintiffs Motion for Summary Judgement was to file a Partial Objection, disputing only the issue of whether Plaintiffs are entitled to attorneys fees.

*Defs.' Partial Objection* ¶ 2.

4. Defendants Memo in Support of their Partial Objection cited with approval Plaintiffs' argument that the Ordinance is invalid:

The Plaintiffs apparently understood at the Town Meeting that supporters of the Ordinance were explaining: 'in order for the Ordinance to have legal effect, change would have to occur at the state level and that municipalities simply were not empowered to do what the Ordinance purports to do.'

*Defs.' Memo* at 4, citing *Pls.' Objection NWA Mot. Intervene* ¶ 18.

5. Plaintiffs similarly recognize a lack of adversity between the two existing parties: "[t]he [D]efendants' partial objection appears to concede the legal issues raised in the plaintiffs' motion for summary judgment." *Pls' Resp. Defs.' Partial Objection* ¶1.

6. Evidence that Defendants agree with the Plaintiffs on the substantive issue in this case, the validity of the Ordinance, bears on this Court's analysis of whether the NWA may intervene to defend its members' rights that an otherwise unanswered challenge to the Ordinance threatens.

7. The decision to grant or deny intervention hinges on whether: "(1) the aspiring intervenor [has] a direct and apparent interest to be vindicated through the court process and (2) the potential intervenor [has] a right that is involved in the litigation already pending in court."

*Order Den. Mot. Intervene* at 4.

8. The direct and apparent interest element echoes the principle of State Constitutional standing requiring "parties to have personal legal or equitable rights that are adverse to one another, with regard to an actual, not hypothetical, dispute, which is capable of judicial redress."

*Id.*, quoting *Petition of Guillemette*, 171 N.H. 565 (2018).

9. The existing parties in *Tweed v. Nottingham* have no substantive issues in dispute and no rights adverse to one another other than the payment of attorneys fees; the NWA seeks to intervene so that the Court may see two sides to the discussion of the Ordinance's validity before ruling on the Plaintiffs' motion for Summary Judgement.

10. Defendants, as a municipal corporation and its representative, have no reason to defend a right that the municipality as a corporation does not hold and cannot exercise.

11. The right to local self government belongs not to the governing body but to the residents of that governing body, who exercise this right collectively by structuring themselves in and conveying power to overlapping and expanding levels of governing bodies: "All government of right *originates from the people*, is founded in consent, and instituted for the general good." N.H. Const., Part I, Art I, (*emphasis added*).

12. State and municipal governments are the results, but not themselves the holders, of the right to local self government that the Ordinance enshrines and which the lawsuit now threatens.

13. Defendants seek now to denounce NWA members' right to local self government and to simultaneously deprive them of this right by allowing the Ordinance to be overturned without the Court hearing from the perspective of those who hold this right and who stand to lose it.

14. This Court recognized that residents may intervene to defend citizen initiative legislation when the municipality's governing boards oppose the challenged ordinance. Court Order at 12, *citing G2003B, LLC v. Town of Weare*, 153 N.H. 725, 726 (2006).

15. This Court distinguished the NWA from the residents that were intervenors in *G2003B*:

At this stage of the present litigation there is no evidence in the record that the residents' interests are not adequately represented by the Town government. Unlike the Town of Weare in *G2003B*, the Town of Nottingham has given no indication that it does not intend to vigorously defend the Ordinance.

Order Denying Mot. Intervene at 16.

16. In *G2003B*, the Selectboard “sent a letter to certain residents of Weare, particularly those residents who circulated the petition to place the [contested ordinance] on the March 2002 ballot [stating that] the Town did not intend to expend the amount of money from the town budget necessary for a vigorous defense of the action, but notified the recipients of the letter that they could intervene.” 153 N.H. at 726.

17. The Town of Nottingham has not sent the NWA a formal letter inviting intervention, but has nonetheless put its residents, the Plaintiffs, and this Court on notice that the Town of Nottingham’s only interest in this case is not paying attorneys fees and that Defendants are content to let the Court and the Plaintiffs settle the validity of the Ordinance.

18. Like the Town of Weare in *G2003B*, the Town of Nottingham has indicated their unwillingness to expend resources to provide vigorous litigation over citizen initiative legislation in which the municipality has no interest, showing a similar need for an intervenor in this case.

19. The NWA asks this Court for permission to intervene so that its members’ rights to local self government, to clean air and water, and to intervene in defense of this Ordinance are not stripped without an actual dispute between the parties and without a chance for the holders of these rights to dispute this deprivation in accordance with the due process of law.

20. In addition to being necessary to serve the interest of justice and to ensure vigorous litigation, granting the requested relief upholds the interest of judicial efficiency and would not unduly prejudice any existing party or this Honorable Court.

21. The NWA filed the original Motion to Intervene on May 16th, 2019, upon which this Court has not yet ruled, and subsequent to this filing the original Defendants and the Plaintiffs

have readily assented to and initiated delays in this case. *See, e.g.,* Assented-to Motion to Continue Trial and Reschedule Dispositive Motion Deadline, filed October 31, 2019 *and* Assented to Motion to Extend Time for Filing of Dispositive Motions, filed January 6, 2020.

22. As of the date of this filing the Court has issued no rulings on substantive motions, except for the Order denying the first Motion to Intervene.

23. Holding in abeyance the proceedings on any exchange of dispositive motions will preserve the existing parties' and the courts' resources on litigating issues that might otherwise have to be revisited with the NWA added as a party.

24. Counsel for the NWA sought assent to this motion from Plaintiffs and Defendants on February 19, 2020, and [result of this request].

WHEREFORE, the NWA respectfully requests that this Court

- A. Grant this Renewed Motion to Reconsider the Motion to Intervene highlighting facts now on the record that did not exist when the NWA filed the original Motion to Reconsider;
- B. Hold the summary judgement motion in abeyance pending the final resolution of the NWA's Motion to Intervene, which final resolution includes a decision on the NWA's currently pending Motion to Reconsider and any subsequent appeal that the NWA may timely pursue to the New Hampshire Supreme Court; and
- C. Grant any such relief as this Court deems necessary and just.

Respectfully submitted,

Dated: February 19, 2020

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